

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



CALIFORNIA ASSOCIATION OF  
PSYCHIATRIC TECHNICIANS,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF  
STATE HOSPITALS),

Respondent.

Case No. SA-CE-2056-S

PERB Decision No. 2568-S

June 12, 2018

Appearances: Sean H. Bedrosian, Attorney, for California Association of Psychiatric Technicians; State of California Department of Human Resources by Stanley Marubayashi, Labor Relations Counsel, for State of California (Department of State Hospitals).

Before Banks, Winslow, and Shiners, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the State of California (Department of State Hospitals) (DSH) to the proposed decision of an Administrative Law Judge (ALJ). The proposed decision concluded that DSH violated section 3519, subdivisions (a), (b) and (c), of the Ralph C. Dills Act (Dills Act)<sup>1</sup> by refusing to provide relevant and necessary information requested by the California Association of Psychiatric Technicians (CAPT or Union) for the purpose of representing a bargaining unit member in a potential appeal of a formal corrective action. Based on our review of the proposed decision and the entire record in light of the parties' submissions, we affirm the decision and order.

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<sup>1</sup> The Dills Act is codified at Government Code section 3512, et seq. Unless otherwise indicated, all statutory references are to the Government Code.

## BACKGROUND

DSH is a state employer within the meaning of Dills Act section 3513, subdivision (j). Coalinga State Hospital (Hospital) is a state hospital operating under the jurisdiction of the DSH. (Welf. & Inst. Code, § 4100, subd. (b).) CAPT is a recognized employee organization within the meaning of Dills Act section 3513, subdivision (b), and exclusively represents statewide Bargaining Unit 18 (psychiatric technician unit). At all relevant times, Veronica Regalado (Regalado) was employed by the Hospital as a psychiatric technician, and therefore was a state employee within the meaning of Dills Act section 3513, subdivision (c).

### Pertinent Sections of the Memorandum of Understanding

The Memorandum of Understanding (MOU) between CAPT and the State of California during the relevant time period provides in pertinent part:

#### ARTICLE 2 – PSYCHIATRIC TECHNICIAN PROVISIONS

##### 2.1 Professional Recognition and Rights

[¶ . . . ¶]

##### B. Rights

[¶ . . . ¶]

##### 3. Disciplinary representation will be administered as follows:

[¶ . . . ¶]

##### c. At the request of the employee, representation shall be permitted at counseling sessions when:

- (1) The result of the counseling session is reduced to writing, and
- (2) The resulting corrective counseling memorandum is included in the employee's official personnel file; and
- (3) The corrective counseling memorandum refers to disciplinary action.

- d. Corrective counseling memorandums, including but not limited to counseling memos, letters of instruction (LOIs), work improvement discussions (WIDs), or letters of expectation (LOE) meeting the above criteria may be appealed through the department's complaint process. Corrective counseling memorandums are part of the progressive disciplinary process. Departments shall utilize, as a reference, the supervisors guide to address employee performance on the CalHR website.
- e. Every corrective counseling memorandum shall be written by the employee's supervisor and shall refer to a specific incident or incidents. When appropriate because of direct involvement, the corrective counseling memorandum may be written by other than the employee's supervisor. For issues not involving a formal investigation, the corrective counseling memorandum shall be issued to the employee within thirty (30) calendar days of the incident described in the memo, or from the date of discovery of the incident. . . .

[¶ . . . ¶]

- 7. When formal adverse action is taken against an employee, the employee shall be given a copy of all documents and other investigating materials that were used to formulate the adverse action.

[¶ . . . ¶]

## ARTICLE 9 – WORKING CONDITIONS

### 9.5 Personnel File

- A. An employee's departmental personnel file shall be maintained in the facility's personnel office.
- B. An employee, and/or the CAPT steward or representative if properly authorized by the employee, may review his/her personnel file during regular personnel office hours, subject to operating needs of the personnel office. Upon prior approval of his/her supervisor, an employee and/or CAPT steward shall be granted a reasonable period of release time during personnel office hours to review the

employee's personnel file. The personnel file may not be removed from the personnel office unless approved by the department head or designee. Copies of material within the personnel file shall be provided upon written request of the employee or, if properly authorized by the employee, the CAPT steward, subject to normal duplicating fees.

[¶ . . . ¶]

K. One file may be kept on each employee by the supervisor, in a locked, secure file. An employee, and/or the CAPT steward or representative if properly authorized by the employee, may review his/her supervisory working file during regular office hours, subject to the availability of the supervisor.

[¶ . . . ¶]

## ARTICLE 12 – REPRESENTATION AND ASSOCIATION PROVISIONS

### 12.1 CAPT Representation

A. The State recognizes and agrees to deal with designated CAPT stewards, CAPT elected representatives or CAPT consultants on the following:

1. The administration of this contract.
2. Employee discipline cases.

[¶ . . . ¶]

## ARTICLE 13 – GRIEVANCE AND ARBITRATION PROCEDURE

[¶ . . . ¶]

### 13.2 Complaint Procedure

A. A complaint is a dispute of one (1) or more employees or a dispute between CAPT and the State involving the application or interpretation of a rule, policy, decision or order not covered by this Agreement and not under the jurisdiction of the State Personnel Board.

[¶ . . . ¶]

- C. Complaints shall be discussed with the complainant's immediate supervisor within fourteen (14) calendar days of the event or occurrence giving rise to the complaint.

[¶ . . . ¶]

- I. Complainants shall be allowed a reasonable amount of time without loss of pay or benefits to confer with a CAPT representative regarding their complaint.
- J. CAPT representatives shall be provided a reasonable amount of time without loss of pay or benefits for purposes of preparing and presenting complaints.

(Emphasis added.)

### Coalinga State Hospital

The Hospital provides mental health care for mentally ill inmates<sup>2</sup> and mentally disordered offenders.<sup>3</sup> The Hospital employs 700 to 750 psychiatric technicians.

At all relevant times, Jaime Garcia (Garcia) was the CAPT chapter president and Kester Oudney (Oudney) was the CAPT chapter vice-president at the Hospital. Bill Thomson (Thomson) was the Hospital's Labor Relations Analyst Coordinator. Donna Feehan (Feehan) was the Hospital's Discipline Officer.

### Patient Complaint Filed Against Regalado

Psychiatric Technician Regalado worked in Unit 21 of the Hospital. In late 2014 or early 2015, a group of 14 patients filed a complaint against Regalado that included reports of suspected dependent adult/elder abuse. The complaint was forwarded to the Hospital's Office

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<sup>2</sup> These patients are convicted and sentenced to the California Department of Corrections and Rehabilitation, but are sent to a state hospital for their benefit and care. (Penal Code, § 2684.)

<sup>3</sup> These patients are ordered by the court to be held involuntarily for treatment even after the inmate has been released from state prison or parole because the patient represents a substantial danger to others. (Penal Code, § 2972.)

of Special Investigations (OSI) and assigned to OSI Investigator Matthew Tarkington (Tarkington) to investigate. Regalado requested that CAPT represent her during the investigation, and Oudney was assigned to represent her.

Tarkington conducted recorded interviews of all 14 complaining patients. After interviewing the patients, on February 19, 2015, Tarkington interviewed Regalado. Regalado was represented by Oudney, who recorded the interview. Tarkington prepared an investigative report. On or about April 1, 2015, Tarkington sent a letter to Regalado stating that the investigation had been completed.

#### The Hospital's Decision to Issue a Formal Corrective Action to Regalado

After the investigation was complete, a folder containing documents regarding the investigation was circulated among Discipline Officer Feehan, and the various managers and administrators within Regalado's chain of command. The folder included pertinent Hospital policies such as administrative directives (ADs), nursing policies and procedures (NPPs),<sup>4</sup> the OSI investigative report,<sup>5</sup> witness statements, and Regalado's supervisory and official personnel file. These Hospital officials recommended to the Hospital's Executive Director that Regalado receive a formal corrective action. A formal corrective action document then was prepared for the signature of these managers and administrators.

The events set forth in a formal corrective action can be used to prohibit a psychiatric technician from participating in the MOU's post and bid process. Additionally, the formal corrective action can be referred to the Board of Vocational Nursing and Psychiatric

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<sup>4</sup> A hard copy of the ADs and the NPPs are maintained on each Hospital unit as well as on the Hospital's intranet.

<sup>5</sup> Program Director Donald Duncan (Duncan), who was a signatory to the formal corrective action and reviewed the supporting documentation, testified that the entire investigative report may not have been included in the folder, but that it contained at least a summary of the report.

Technicians for its consideration of a possible licensure action against the psychiatric technician. Lastly, a formal corrective action can be used to establish that the Hospital has utilized the progressive discipline process, which allows the Hospital to take a more serious employment action against the employee, up to and including dismissal, if subsequent violation(s) occur.

#### Issuance of Formal Corrective Action

On or about April 30, 2015, Program 7<sup>6</sup> Nursing Coordinator Valerie Lara (Lara) issued Regalado a formal corrective action for unprofessional conduct toward patients. Specifically, Regalado was charged with using profanity toward several patients. She was also charged with refusing to give a patient an “as needed” medication and later only begrudgingly administering it to the patient while commenting that the patient should go speak to his/her sponsor. The formal corrective action directed Regalado to be professional while interacting with staff and patients, and not use profanity. She also was directed to review a number of DSH and Hospital written policy directives which were specifically enumerated in the document. The formal corrective action stated that it was to remain in Regalado’s official personnel file for twelve months and that failure to improve her behavior could result in formal adverse action.<sup>7</sup> The formal corrective action was signed by Regalado’s unit supervisor,<sup>8</sup> Discipline Officer Feehan,

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<sup>6</sup> Unit 21, where Regalado works, is within Program 7.

<sup>7</sup> Government Code section 19570 defines adverse action as “dismissal, demotion, suspension or other disciplinary action.” California Code of Regulations, title 2, section 51.2, subdivision (b), defines adverse action as an “action taken by an appointing power to discipline an employee and includes formal reprimand, transfers for disciplinary reasons, suspension, reduction-in-salary, demotion and dismissal.”

<sup>8</sup> This individual’s name is unclear from the signature on the document and cannot be identified from witness testimony.

Program Director Duncan, Clinical Administrator Frank Maul, and Executive Director Audrey King.

### CAPT Representation

After she received the formal corrective action, Regalado again asked CAPT to represent her. After conferring with Regalado, Oudney decided that he wanted to review the Hospital's supporting documentation for the formal corrective action to determine what course of action the Union should take in representing Regalado. Specifically, CAPT wanted to know if Regalado had committed similar incidents in the past and whether she had been properly trained to avoid such incidents.

On Thursday, May 7, 2015, Oudney sent the following e-mail attachment to Labor Relations Analyst Coordinator Thomson and Nursing Coordinator Lara:

CAPT would like to request [ ] information in connection with the [formal corrective action] issued to Veronica Regalado, [Psychiatric Technician], on April 30<sup>th</sup> 2015. The union is investigating the integrity of the [formal corrective action], and to assist the union make a determination if a grievance exists, and if it does, to prepare and process the grievance, the union hereby requests the following information:

1. All supporting documents, statements, and police reports that management relied upon to issue [the formal corrective action] to Veronica Regalado.
2. Copies of performance improvement plan that clearly [lays] out the areas for our client to improve (Prior to [the formal correction action being] issued.)
3. List of all [Bargaining Unit] 18 members that have been issued [formal corrective actions] for similar incidents in the past three years.
4. All counseling [memos] from the unit supervisor that shows a good-faith effort to correct the problem.
5. All preventative measures in place prior to this incident— e.g. supervisor notes, summary of discussion, and

memorandums making our client aware of acceptable and unacceptable conduct as it pertains to this violation.

6. Any other records relevant to support [management's] action.

It is our intention to resolve this case at the lowest level possible. Please provide the information by 5/12/2015. If any part of this request is unavailable, please state so in writing and provide the remaining items by the above date, which the union will accept without prejudice to its position that it is [entitled] to all documents and information sought in this request.

On May 12, 2015, Oudney's information request was forwarded to Discipline Officer Feehan for response because Thomson was not available. Feehan responded that day, stating that the Hospital would not provide the requested documents "at this time"<sup>9</sup> because a formal corrective action did not constitute an adverse action. She went on to say that Regalado would be entitled to all documents "relied upon" by the Hospital if she was served with an adverse action. Feehan suggested that Oudney or Regalado could contact OSI to review the investigation but it would be OSI's decision whether to share the investigation with them. Feehan ended the response by stating that if Oudney believed that the Hospital had violated the MOU, CAPT could file an informal or formal grievance.

On May 14, 2015, Oudney sent an e-mail to Romero Orasio (Orasio) of the Hospital's OSI unit asking for documents in the possession of OSI regarding its investigation of Regalado, including reports, notes, witness statements, audio recordings, and any other items discovered during the investigation. Orasio responded three hours later stating that these

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<sup>9</sup> Feehan testified that, at the time she received the information request, she was aware of an ongoing investigation of Regalado's conduct and did not feel she could release materials to CAPT from an ongoing investigation. She admitted, however, that she did not know whether the ongoing investigation involved the incidents that led to Regalado receiving the formal corrective action.

documents are only provided when the employee who is the subject of the investigation is served with an adverse action.

### Informal Grievance

On May 20, 2015, Garcia sent an informal grievance to Thomson alleging that the Hospital had violated the MOU's recognition clause by its denial of CAPT's request for information. Garcia asked that the formal corrective action taken against Regalado be rescinded. Garcia asked Thomson to respond to the informal grievance within the seven-day time frame in the MOU's grievance procedure.

On May 21, 2015, Orasio responded to the informal grievance by stating that it was his understanding that Regalado did not receive an employment action that rose to the level of an adverse action and therefore she had no right to obtain access to the documents used in the formal corrective action.

On May 22, 2015, Thomson responded to the grievance by setting forth the Hospital's formal response to the May 7, 2015 information request. Thomson denied items one and six, stating the formal corrective action did not rise to the level of an adverse action; referred Garcia to Regalado's official personnel and supervisory files in response to items two, four and five, noting that they could be accessed only with Regalado's authorization; and stated that the Hospital did not maintain the historical data set forth in item three, and that such information was confidential and "may not be released without the concerned employee's authorization."

According to Garcia, CAPT did not file a complaint or grievance on behalf of Regalado regarding the formal corrective action because, due to the Hospital's denial of the requested information, the Union was unable to evaluate potential defense(s) to the action.

## Adverse Action

On or about August 12, 2015, the Hospital issued Regalado an adverse action resulting in a 10 percent salary reduction for 12 months. Regalado was charged with being dishonest during the February 19, 2015 investigatory interview with Tarkington where she had denied using profanity toward patients. The adverse action also listed numerous incidents that occurred after Tarkington's investigation had been completed. The formal corrective action was listed in, and attached to, the adverse action in support of the Hospital's contention that Regalado had received prior notice that her conduct was inappropriate and that the adverse action was supported by progressive discipline. Also attached to the adverse action were the following materials related to the formal corrective action: Tarkington's sustained administrative investigation, the group complaint and individual complaints of the 14 patients, the recorded interviews of those patients, Regalado's training records, and corrective documents from Regalado's supervisory file.

## PROCEDURAL HISTORY

On November 3, 2015, CAPT filed the unfair practice charge in this case. DSH filed a position statement on December 7, 2015.

On December 15, 2015, PERB's Office of the General Counsel issued a complaint alleging that DSH violated Dills Act section 3519, subdivisions (a), (b), and (c), by failing and/or refusing to provide necessary and relevant information in response to CAPT's May 7, 2015 information request.

On January 6, 2016, DSH answered the complaint, denying any violation of the Dills Act and alleging multiple affirmative defenses. The answer did not, however, allege an affirmative defense that CAPT had waived its right to obtain the requested information. On February 4, 2016, an informal conference was conducted, but the matter was not resolved.

Formal hearing was conducted on May 16, 2016. The matter was submitted for decision upon the receipt of closing briefs on July 22, 2016.

The ALJ issued his proposed decision on July 27, 2016. The proposed decision concluded that DSH violated the Dills Act by refusing to provide the requested information to CAPT. Nonetheless, the proposed decision did not order DSH to provide that information to the Union because CAPT had already received the investigation materials and the requested information from Regalado's personnel and supervisory files by the time the charge was filed. As for the list of unit employees who had received formal corrective actions in the prior three years for conduct similar to Regalado's, the proposed decision concluded that such a list did not exist and therefore did not order DSH to provide it to CAPT. Accordingly, the proposed remedy was limited to a cease and desist order, and a notice posting.

DSH timely filed exceptions to the proposed decision and a supporting brief. CAPT filed a response to the exceptions and a supporting brief, but did not file any cross-exceptions.

#### DISCUSSION

The sole issue in this case is whether DSH violated the Dills Act by refusing to provide the information CAPT requested on May 7, 2015. An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty to represent bargaining unit employees. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 13.) An employer's failure or refusal to provide such information violates the duty to bargain in good faith unless the employer proves the information is "plainly irrelevant" or raises a valid defense to production of the information. (*Ibid.*; *State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S, p. 28.)

DSH's exceptions focus solely on three defenses to production of the requested information: contractual waiver, confidentiality, and the non-existence of the list of employees who had received formal corrective actions.<sup>10</sup> We address these defenses in turn.

1. Contractual Waiver

DSH argues that CAPT waived its right to obtain information contained in Regalado's personnel and supervisory files because the information request did not indicate that Regalado had authorized the Union to review those materials, as required by Article 9.5 of the MOU. DSH also argues that by agreeing to an MOU provision requiring the State to provide an employee who receives a formal adverse action with the materials upon which the action is based, CAPT waived the right to receive such materials with respect to corrective actions that do not constitute formal adverse actions.

We cannot consider these exceptions because they are not properly before the Board. Contractual waiver of a statutory right is an affirmative defense that must be pled and proven by the party asserting waiver. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359, p. 30; *City of Long Beach* (2012) PERB Decision No. 2296-M, p. 20.) An affirmative defense must be pled in the answer to the complaint or it is waived. (*Los Angeles Unified School District, supra*, at p. 30.) Here, DSH did not plead waiver as an affirmative defense in its answer, nor did it seek to amend its answer before or during the hearing to add a waiver defense. DSH consequently forfeited its affirmative defense that certain language in the MOU constitutes a waiver of CAPT's statutory right to information necessary and relevant

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<sup>10</sup> DSH did not except to the ALJ's conclusion that the information CAPT requested on May 7, 2015, was necessary and relevant to the Union's representation of Regalado with regard to the formal corrective action she had received a week earlier. In the absence of a specific exception, that issue is not properly before the Board and we therefore do not address it. (PERB Reg. 32300 subd. (c); *County of Solano* (2014) PERB Decision No. 2402-M, p. 12.)

to representing Bargaining Unit 18 members. As a result, the Board cannot consider the merits of DSH's contractual waiver arguments.

2. Confidentiality

DSH next argues that it was privileged to withhold the investigation materials to protect employee and patient confidentiality, and that the ALJ erred in not balancing those confidentiality interests against CAPT's need for the requested information. Had the ALJ done so, DSH claims, the balance would have weighed in favor of withholding the materials from CAPT.

Constitutional privacy interests may limit a union's right to obtain particular information. (*Los Angeles Unified School District* (2015) PERB Decision No. 2438, pp. 7-8; *Modesto City Schools and High School District* (1985) PERB Decision No. 479, p. 7.) A claim that disclosure of requested information would implicate confidentiality interests must be made in a timely fashion so the parties can meet and confer over how to ameliorate the privacy concern. (*County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, p. 50; *Detroit Newspaper Agency* (2015) 317 NLRB 1071, 1072.) Consequently, belated confidentiality claims are viewed with skepticism. (*Earthgrains Co.* (2007) 349 NLRB 389, 397.)

Although the ALJ did not address DSH's confidentiality defense, this was a harmless error because the Hospital did not raise a timely confidentiality concern in response to CAPT's May 7, 2015 information request. The Hospital first raised a confidentiality concern on May 22, 2015, in Labor Relations Analyst Coordinator Thomson's e-mail response to CAPT's request. Although Thomson responded only 15 days after the request was made, the 14-day period for initiating the complaint procedure in MOU Article 13.2 had already ended by then. This deprived CAPT of the ability to negotiate over accommodating privacy interests in time to

receive the information before the last day to file a complaint. Further, Thomson asserted a confidentiality concern about only one requested item—the list of bargaining unit members who had received similar formal corrective actions. He did not raise any confidentiality or privacy concerns over the investigation materials, which are the sole subject of DSH’s confidentiality defense before PERB. That defense accordingly fails because it was not raised in a timely manner. (See, e.g., *Earthgrains Co.*, *supra*, 349 NLRB at p. 397 [rejecting confidentiality defense when employer did not raise it until after the charge had been filed]; *Detroit Newspaper Agency*, *supra*, 317 NLRB at p. 1072 [confidentiality claim asserted for the first time just prior to hearing was untimely].)

3. Non-Existence of List of Employees with Prior Formal Corrective Actions

Finally, DSH excepts to the ALJ’s conclusion that it violated the Dills Act by failing to provide all of the information requested by CAPT while simultaneously finding that one of the requested items, a list of all bargaining unit members who had received formal corrective actions in the prior three years for incidents similar to Regalado’s, did not exist. As DSH correctly notes, an employer need not comply with an information request if the requested information does not exist. (*County of Solano* (2014) PERB Decision No. 2402-M, p. 12.) But when the requested information does exist in some form, the fact that the employer may have to compile it from various sources does not excuse the employer from producing it unless the employer can prove doing so would be unduly burdensome. (*Regents of the University of California (Davis)* (2010) PERB Decision No. 2101-H, pp. 33-34; *Chula Vista City School District* (1990) PERB Decision No. 834, p. 56.) Here, DSH presented evidence that to compile the list requested by CAPT, the Hospital would have to manually search the personnel files of all Bargaining Unit 18 employees to see if they received a formal corrective action for conduct similar to Regalado’s within the prior three years.

We need not decide whether this would be unduly burdensome because DSH did not assert the potential burden of creating the list as a defense until the hearing. Just as with a confidentiality claim, an assertion that an information request is unduly burdensome must be timely raised so the parties can negotiate over eliminating or reducing the employer's burden. (*Conditioned Air Systems, Inc.* (2014) 360 NLRB 789, 791; see *City of Burbank* (2008) PERB Decision No. 1988-M, p. 17 [employer's response to union's information request "did not say how or why production would be burdensome or suggest a way to narrow the request to alleviate the problem"].) DSH's failure to timely raise a burden of production claim deprived CAPT of the ability to negotiate over how the information might be provided in a less burdensome manner within the short timeframe the Union had to determine its course of action with regard to challenging Regalado's formal corrective action. Accordingly, the ALJ's conclusion that DSH violated the Dills Act by refusing to provide the requested list was correct. Omitting production of the list from the remedy therefore was an error, which we will correct in our Order.

#### REMEDY

Pursuant to Dills Act section 3514.5, subdivision (c), PERB is given the authority to:

[I]ssue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It has been found that the Hospital refused to provide CAPT with requested information relevant and necessary for the Union to represent Regalado with respect to the April 28, 2015 formal corrective action. By this conduct, the Hospital violated Dills Act section 3519, subdivisions (a), (b), and (c). It is therefore appropriate to order the Hospital to cease and

desist from such conduct. (*State of California (Department of Corrections)* (1995) PERB Decision No. 1104-S.)

It is also appropriate to require the Hospital to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of DSH, indicating that it will comply with the terms thereof. The notice shall not be reduced in size and reasonable efforts will be taken to insure that it is not altered, covered by any material, or defaced, and will be replaced if necessary. Posting such a notice will inform employees that DSH has acted in an unlawful manner, and is being required to cease and desist from this activity and will comply with the order. It effectuates the purposes of the Dills Act that employees be informed of the resolution of the dispute and DSH's readiness to comply with the ordered remedy.

(*State of California (Department of Personnel Administration, et al.)* (1998) PERB Decision No. 1279-S.)

The notice posting shall include both a physical posting of paper notices at all places where CAPT members at the Hospital are customarily placed, as well as a posting by electronic message, intranet, internet site, and other electronic means customarily used by the Hospital to communicate with Bargaining Unit 18 employees. (*Centinela Valley Union High School District* (2014) PERB Decision No. 2378, pp. 11-12, citing *City of Sacramento* (2013) PERB Decision No. 2351-M.)

The appropriate remedy in cases involving the failure to provide information typically includes an order to provide the requested information upon the charging party's request.

(*Trustees of the California State University* (1987) PERB Decision No. 613-H, adopting proposed decision, p. 22.) From the record it appears that the Hospital has already provided CAPT with documents responsive to requests one, two, four, five, and six, when it provided CAPT/Regalado with the materials supporting the adverse action and access to Regalado's

supervisor and personnel files. As to request number three, a list of all bargaining unit members who had received formal corrective actions in the prior three years for incidents similar to Regalado's, there is no evidence that the Hospital ever provided such a list to CAPT. Accordingly, we will order the Hospital to provide that list upon CAPT's request.

### ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the State of California (Department of State Hospitals) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519, subdivisions (a), (b), and (c), by refusing to provide the California Association of Psychiatric Technicians (CAPT) with requested information, as set forth in its May 7, 2015 information request, that was relevant and necessary to assist CAPT in evaluating its representation of a member who was issued a formal corrective action.

Pursuant to Government Code section 3514.5, subdivision (c), it hereby is ORDERED that the State of California (Department of State Hospitals), and its representatives, shall:

A. CEASE AND DESIST FROM:

1. Failing to provide necessary and relevant information to CAPT.
2. Interfering with bargaining unit employees' right to be represented by CAPT.
3. Denying CAPT the right to represent bargaining unit employees in their employment relations with the State of California.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Upon request, provide CAPT with a list of all Bargaining Unit 18 members employed at Coalinga State Hospital who received a formal corrective action in the

three years prior to May 7, 2015, for conduct similar to that charged in Veronica Regalado's April 28, 2015 formal corrective action.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations at Coalinga State Hospital, where notices to employees represented by CAPT are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the State of California (Department of State Hospitals), indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.

In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the institution to communicate with its employees in the bargaining units represented by CAPT. Pursuant to *City of Sacramento, supra*, PERB Decision No. 2351-M and other applicable authority, the State of California (Department of State Hospitals) shall identify and include in its electronic posting any and all affected employees represented by CAPT employed at Coalinga State Hospital, who are no longer employed as of the date of posting, or use personal delivery or some alternative means of notification reasonably devised to ensure that any and all affected employees who are no longer employed at Coalinga State Hospital by the State of California (Department of State Hospitals) are advised of their rights and remedies under this Decision.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. The State of California (Department of State Hospitals)

shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CAPT.

Members Banks and Winslow joined in this Decision.

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**



After a hearing in Unfair Practice Case No. SA-CE-2056-S, *California Association of Psychiatric Technicians v. State of California (Department of State Hospitals)*, in which all parties had the right to participate, it has been found that the State of California (Department of State Hospitals) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519, subdivisions (a), (b), and (c), by refusing to provide the California Association of Psychiatric Technicians (CAPT) with requested information that was relevant and necessary to assist CAPT in evaluating its representation of a member who was issued a formal corrective action.

As a result of this conduct, we have been ordered to post this Notice and we will:

**A. CEASE AND DESIST FROM:**

1. Failing to provide necessary and relevant information to CAPT.
2. Interfering with bargaining unit employees' right to be represented by CAPT.
3. Denying CAPT the right to represent bargaining unit employees in their employment relations with the State of California.

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:**

1. Upon request, provide CAPT with a list of all Bargaining Unit 18 members employed at Coalinga State Hospital who received a formal corrective action in the three years prior to May 7, 2015, for conduct similar to that charged in Veronica Regalado's April 28, 2015 formal corrective action.

Dated: \_\_\_\_\_

State of California Department of State Hospitals

By: \_\_\_\_\_

Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.